



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XC759]

#### Addition of Species to the Annexes of the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for public comments.

**SUMMARY:** During a meeting of the Scientific and Technical Advisory Committee (STAC) under the Protocol to the Cartagena Convention on Specially Protected Areas and Wildlife (SPAW Protocol), held virtually on January 30-February 1, 2023, 24 animal species were nominated to be added to the Annexes of the SPAW Protocol. The Department of State and National Marine Fisheries Service (NMFS) solicit comment on the nominations to add these species to the Annexes.

**DATES:** Comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on the recommendations to add the 24 species to the Annexes of the SPAW Protocol, identified by NOAA-NMFS-2023-0017, by the following method:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0017 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered. All

comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Anonymous comments will be accepted (enter N/A in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Kristen Koyama, (301) 427-8456; *kristen.koyama@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The SPAW Protocol is a protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention or Convention). There is also a protocol to the Convention addressing land-based sources of pollution and a protocol addressing regional cooperation on oil pollution preparedness and response. The SPAW Protocol was adopted in 1990 and entered into force in 2000. The United States ratified the SPAW Protocol in 2003. There are currently 18 countries that are Parties to the SPAW Protocol from throughout the Wider Caribbean Region.

Participants at the January 2023 meeting of the STAC to the SPAW Protocol included representatives from: Barbados, Belize, Colombia, Dominican Republic, France, Guyana, Honduras, the Netherlands, Nicaragua, Panama, Saint Lucia, Trinidad and Tobago, the United States of America, and Venezuela. Representatives of several non-governmental organizations also attended as observers.

The U.S. delegation included representatives from the U.S. Department of State and NOAA's National Marine Fisheries Service (NMFS) and National Ocean Service. Additional information and meeting documents can be obtained at *<https://www.unep.org/cep/events/scientific-and-technical-advisory-committee-meetings-stacs/spaw-stac10>*.

## **Convention and Convention Area**

The Cartagena Convention is a regional agreement for the protection and development of the marine environment of the wider Caribbean. The Convention was adopted in 1983 and entered into force in 1986. The United States ratified the Convention in 1984. The Convention area includes the marine environment of the Gulf of Mexico, the Caribbean Sea and the adjacent areas of the Atlantic Ocean south of lat. 30° N. and within 200 nautical miles (nmi) of the Atlantic coasts of the Parties. The United States' responsibility within this Convention area includes: U.S. waters off of Puerto Rico, the U.S. Virgin Islands, and peninsular Florida, including the Atlantic coast; the waters off of a number of islands including coastal barrier islands and the Florida Keys; and the Gulf of Mexico waters under U.S. jurisdiction. The SPAW Protocol provides that each Party may designate related terrestrial areas over which they have sovereignty and jurisdiction (including watersheds) to be covered by the SPAW Protocol. The United States has not designated any terrestrial areas under the SPAW Protocol and “does not intend to designate a terrestrial area under the Protocol unless requested to do so by an interested state or territory . . .” (Senate Executive Report 107-8).

## **The Annexes and U.S. Obligations Under Each Annex**

The SPAW Protocol includes three Annexes. Plant species subject to the highest levels of protection are listed in Annex I, and animal species subject to the highest levels of protection are listed in Annex II. Plants and animals subject to some management, but lesser protections than those afforded to species listed in Annexes I or II, are listed in Annex III.

Annexes I (flora) and II (fauna) are to include endangered and threatened species, or subspecies, or their populations as well as rare species. The SPAW Protocol describes rare species as those “that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and

which are potentially or actually subject to decline and possible endangerment or extinction.”

Under Article 11(1), for fauna listed in Annex II, Parties “shall ensure total protection and recovery to the species...by prohibiting: (i) the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products; [and] (ii) to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation, estivation or migration, as well as other periods of biological stress.”

Also under Article 11(1), for Annex III species, the SPAW Protocol states: “Each Party shall adopt appropriate measures to ensure the protection and recovery of the species of flora and fauna listed in Annex III and may regulate the use of such species in order to ensure and maintain their populations at the highest possible levels.” Therefore, some regulated harvest may be permitted for species on Annex III. The protective provisions of this Annex are not intended to be more restrictive than the provisions of Annexes I and II.

The United States ratified the SPAW Protocol, including Annexes, subject to certain reservations, including the following with respect to Article 11(1): “The United States does not consider itself bound by Article 11(1) of the [SPAW] Protocol to the extent that United States law permits the limited taking of flora and fauna listed in Annexes I and II which is incidental, or for the purpose of public display, scientific research, photography for educational or commercial purposes, or rescue and rehabilitation.”

The United States has not designated any terrestrial area under the SPAW Protocol. As the United States explained at the time the SPAW Protocol was ratified, “The United States does not plan to designate terrestrial area under the Protocol since no state or territory has identified a need or desire to designate terrestrial area. . . .” (Senate

Treaty Document 103-5). In addition, “Several terrestrial species, *e.g.* bats (*Tadarida brasiliensis* and *Brachyphylla cavernarum*) and falcons (*Falco peregrinus*), are listed in the Annexes. The listing of these species, however, is not intended to describe the relevant terrestrial scope of the Protocol. As the United States has not designated any terrestrial area, the Protocol obligations will not apply with respect to such species.” *Id.*

### **Summary of Annexes**

Annex I contains a total of 53 plant species. All plant species on Annex I are either: (1) listed under the U.S. Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*); (2) endemic to Florida and protected under Florida law; (3) occur only on Federal land and are fully protected where they occur; (4) are not native to the United States, and are listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where primarily commercial trade would be prohibited; or (5) are not native nor believed to be commercially imported into the United States. 56 FR 12026, 12028 (March 21, 1991). There have been no additions to Annex I since the adoption of the SPAW Protocol.

Annex II currently contains 117 species and 3 groups of species, including all sea turtles and all marine mammals in the region. Most of these animal species are either: (1) listed under the ESA or the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*); (2) are not native to the United States and are listed in Appendix I of CITES; (3) are offered complete protection by domestic legislation in all range countries (whereby the Lacey Act, among other things, prohibits commercial trade in specimens taken, possessed, transported or sold in violation of foreign law); or (4) are endemic to foreign countries and are not commercially imported into the United States. The most recent addition to Annex II by the SPAW Parties was in June 2019.

Annex III currently contains 43 species of plants and 42 species of animals in addition to species of corals, mangroves, and sea-grasses that occur in the region.

## Composition of the Annexes

The plant and animal species included on each Annex can be found here:

<https://www.car-spaw-rac.org/?The-SPAW-Protocol-769>.

## Species Nominated to be Added to the SPAW Protocol Annexes

### ANNEX II

Species	Common name
<b>SHARKS</b>	
<i>Carcharhinus longimanus</i>	Oceanic whitetip shark
<i>Rhincodon typus</i>	Whale shark
<i>Sphyrna lewini</i>	Scalloped hammerhead shark
<i>Sphyrna mokarran</i>	Great hammerhead shark
<i>Sphyrna zygaena</i>	Smooth hammerhead shark
<b>RAYS</b>	
<i>Manta birostris</i>	Giant manta ray
<b>REPTILES</b>	
<i>Iguana delicatissima</i>	Lesser Antillean iguana

### ANNEX III

Species	Common name
<b>FISH</b>	
<i>Scaridae spp. (16 species)</i>	Parrotfish (16 species)
<b>SHARKS</b>	
<i>Carcharhinus perezii</i>	Caribbean reef shark

## Circumstances of SPAW Species Nominations

Article 11(4) of the SPAW Protocol details the requirements for amending the Annexes and states, in part, that a Party may submit a nomination of a species for inclusion in or deletion from the Annexes; that the Party shall submit supporting documentation; and that the SPAW STAC shall review the nomination. At the January 2023 meeting, the SPAW STAC reviewed the species proposed by Parties for listing under the SPAW Protocol and made recommendations to the twelfth SPAW Conference of the Parties (COP12) meeting, expected to be held in April 2023. The STAC recommended that the oceanic whitetip shark and the Lesser Antillean iguana be uplisted from Annex III to Annex II, and that parrotfish (*Scaridae spp.*) and the Caribbean reef shark be added to Annex III. The STAC did not provide a consensus recommendation on the proposals to uplist the whale shark, giant manta ray, and three species of hammerhead sharks from Annex III to Annex II. The STAC referred these nominations to SPAW COP12, which will take a final decision on all species nominations at its meeting in April 2023.

### **Species Under the Jurisdiction of the National Marine Fisheries Service**

Six species nominated to be added to Annex II at the January 2023 meeting fall under the jurisdiction of NMFS: the oceanic whitetip shark (*Carcharhinus longimanus*), giant manta ray (*Manta birostris*), whale shark (*Rhincodon typus*), scalloped hammerhead shark (*Sphyrna lewini*), great hammerhead shark (*S. mokarran*), and smooth hammerhead shark (*S. zygaena*). All six of these species are currently listed in Annex III of the SPAW Protocol. The oceanic whitetip shark, giant manta ray, and four distinct population segments of the scalloped hammerhead shark are currently listed under the U.S. Endangered Species Act. All species nominated to be added to Annex III fall under the jurisdiction of NMFS, including all parrotfish (*Scaridae*) and the Caribbean reef shark (*Carcharhinus perezii*).

### **Species Under the Jurisdiction of the U.S. Fish and Wildlife Service**

The Lesser Antillean iguana (*Iguana delicatissima*), which the STAC recommended to be uplisted from Annex III to Annex II at the January 2023 meeting, falls under the jurisdiction of the U.S. Fish and Wildlife Service. The Lesser Antillean iguana is a terrestrial species. As explained earlier in this notice, the United States has not designated any terrestrial area under the SPAW Protocol and the obligations under the SPAW Protocol do not apply in the United States with respect to terrestrial species. Accordingly, no obligations under the SPAW Protocol would apply to this species if it is added to SPAW Annex II.

### **Comments Solicited**

The Department of State and NMFS solicit comments and information that will inform the United States' consideration of the potential listing of these species in the SPAW Annexes.

Dated: February 8, 2023.

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Kimberly Damon-Randall,  
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